

108TH CONGRESS
1ST SESSION

S. 1795

To amend title 18, United States Code, and the Federal Rules of Criminal Procedure with respect to bail bond forfeitures.

IN THE SENATE OF THE UNITED STATES

OCTOBER 29, 2003

Mr. GRAHAM of South Carolina introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, and the Federal Rules of Criminal Procedure with respect to bail bond forfeitures.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Bail Bond Fairness
5 Act of 2003”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—The Congress makes the following
8 findings:

9 (1) Historically, the sole purpose of bail in the
10 United States was to ensure the defendant’s physical

1 presence before a court. The bail bond would be de-
2 clared forfeited only when the defendant actually
3 failed to appear as ordered. Violations of other, col-
4 lateral conditions of release might cause release to
5 be revoked, but would not cause the bond to be for-
6 feited. This historical basis of bail bonds best served
7 the interests of the Federal criminal justice system.

8 (2) Currently, however, Federal judges have
9 merged the purposes of bail and other conditions of
10 release. These judges now order bonds forfeited in
11 cases in which the defendant actually appears as or-
12 dered but he fails to comply with some collateral
13 condition of release. The judges rely on Federal Rule
14 of Criminal Procedure 46(e) as authority to do so.

15 (3) Federal Rule of Criminal Procedure 46(e)
16 has withstood repeated court challenges. In cases
17 such as *United States v. Vaccaro*, 51 F.3d 189 (9th
18 Cir. 1995), the rule has been held to authorize Fed-
19 eral courts specifically to order bonds forfeited for
20 violation of collateral conditions of release and not
21 simply for failure to appear. Moreover, the Federal
22 courts have continued to uphold and expand the rule
23 because they find no evidence of congressional intent
24 to the contrary, specifically finding that the provi-

1 sions of the Bail Bond Act of 1984 were not in-
2 tended to supersede the rule.

3 (4) As a result, the underwriting of bonds for
4 Federal defendants has become virtually impossible.
5 Where once the bail agent was simply ensuring the
6 defendant's physical presence, the bail agent now
7 must guarantee the defendant's general good behav-
8 ior. Insofar as the risk for the bail agent has greatly
9 increased, the industry has been forced to adhere to
10 strict underwriting guidelines, in most cases requir-
11 ing full collateral. Consequently, the Federal crimi-
12 nal justice system has been deprived of any mean-
13 ingful bail bond option.

14 (5) In the absence of a meaningful bail bond
15 option, thousands of defendants in the Federal sys-
16 tem fail to show up for court appearances every
17 year. When this happens, the expense and effort by
18 Federal law enforcement officers to investigate and
19 apprehend defendants is wasted and the overall in-
20 terests of justice are thwarted.

21 (b) PURPOSES.—The purposes of this Act are—

22 (1) to restore bail bonds to their historical ori-
23 gin as a means solely to ensure the defendant's
24 physical presence before a court; and

1 (2) to grant judges the authority to declare bail
 2 bonds forfeited only where the defendant actually
 3 fails to appear physically before a court as ordered
 4 and not where the defendant violates some other col-
 5 lateral condition of release.

6 **SEC. 3. FAIRNESS IN BAIL BOND FORFEITURE.**

7 (a) IN GENERAL.—

8 (1) FAILURE TO APPEAR.—Section 3146(d) of
 9 title 18, United States Code, is amended by insert-
 10 ing at the end the following: “The judicial officer
 11 may not declare forfeited a bail bond for violation of
 12 a release condition set forth in clause (i) through
 13 (xi), (xiii), or (xiv) of section 3142(c)(1)(B).”.

14 (2) VIOLATION OF A RELEASE CONDITION.—
 15 Section 3148(a) of title 18, United States Code, is
 16 amended by inserting at the end the following: “For-
 17 feiture of a bail bond executed under clause (xii) of
 18 section 3142(c)(1)(B) is not an available sanction
 19 under this section and such forfeiture may be de-
 20 clared only pursuant to section 3146.”.

21 (b) CRIMINAL PROCEDURE.—Rule 46(e)(1) of the
 22 Federal Rules of Criminal Procedure is amended by strik-
 23 ing “there is a breach of condition of a bond” and insert-

1 ing “the defendant fails to appear physically before the
2 court”.

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